IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM NO. 47455-M of 2004
DATE OF DECISION.21.11.2006

Dr. Vinod Sangwan and another .....Petitioners

Versus

State of Haryana. .....Respondent

CORAM **HON'BLE MR. JUSTICE AJAI LAMBA**

PRESENT Mr. Rakesh Nehra, Advocate
Mr. Narender Sura AAG, Haryana.

AJAI LAMBA , J(Oral)

This is a petition under Section 482 of the Code of Criminal Procedure for quashing of FIR bearing No. 153 Annexure P1 dated 3.5.2004 under Sections 498 A, 406, 417, 418 IPC, Police Station City Bhiwani.

It is contended that petitioner no.5 Dharambir was married with Saroj in the year 1998. Petitioner Dharambir suffers from 56% handicap and disability certificate has been placed on record as Annexure P10. The first wife of Dharambir had died a natural death in her parental house. The present marriage was solemnized with the complainant and therefore, it was not expected that in such circumstances and particularly when the petitioner no.5 is handicap, he would be in a position to demand any dowry. Dharambir was not to the liking of the complainant and therefore, the present FIR has been lodged against all the family members.

Petitioner no.1 is the brother in law (DEWAR) of complainant Saroj while petitioner no.2 is his wife. Petitioner no.1 is a

qualified doctor and has been living in Bhiwani since the year 1992 with his three minor children who are studying in Bhiwani. In support of this plea, ration card has been placed on record as Annexure P2. It is contended that the petitioners would have no interest in the matrimonial life of Dharambir and the complainant Saroj in view of separate residence as also the marital status. While Dharambir and Saroj were living in Charkhi Dadri, petitioners 1 and 2 have been living in Bhiwani.

Petitioner no.3 is also the younger brother of Dharambir . The petitioner no.3 is a lecturer in Govt. Senior Secondary School.

Petitioner no.4 is the sister-in-law (JETHANI) of Saroj i.e wife of elder brother of Dharambir. The husband of petitioner no.4 is in the army who has not been implicated in the FIR. Petitioner no.4 has been living in the village with her four children. With such heavy responsibility, she cannot expected to have time for intervening in the married life of Dharambir and Saroj.

Petitioner no.5 Dharambir himself is M.A ,B.Ed and is working in a Govt. High School Adampur, Dadi, Tehsil Dadri.

In the argument of the learned counsel,having considered the totality of facts and circumstances, the investigating agency came to the conclusion that no offence has been committed as no legal evidence or incriminating evidence could be collected. It is under such circumstances that a cancellation report was filed on 27.7.2004 which has been placed on record as Annexure P13. Concluding portion of the report shows that the case was sent up as cancelled.

Learned counsel appearing for the respondent has resisted all these arguments on the plea that subsequently re-investigation in

the case was undertaken and the petitioners have been charge sheeted vide final report under Section 173 Cr. P. C presented on 10.6.2005.

Having noticed the facts given here-in-above, in the context of the cancellation report, the learned counsel appearing for the respondent / State has not been able to point out any material which has been collected during further investigation so as to implicate the petitioners. Only statement of the complainant was again recorded which per-se would not be sufficient to convert a cancellation report into challan thereby forwarding the petitioners for trial.

I have considered the matter at issue. I have heard the learned counsel for the parties.

The facts as unraveled and not disputed reflect that petitioners 1 and 2 are the brother-in-law (DEWAR) and sister -in-law (DEWARNI) of Saroj i.e younger brother of the husband of Saroj and his wife . The petitioner no.1 is qualified doctor and has been living in a separate residence at Bhiwani since the year 1992 i.e 6 years prior to the marriage of Saroj complainant. They have three minor children. Petitioner no.3 Ajit is the other brother who is also highly qualified and is a lecturer. Petitioner no.4 is the wife of elder brother of Dharambir and is living in the village with four children. Her husband is in the army. She also has a separate residence in the village Chandeni , District Bhiwani. Petitioner no.5 Dharambir husband himself is handicapped and this is his second marriage. The evidence with regard to his physical handicap has been placed on record as Annexure P2.

In my considered opinion, considering the facts noticed above, the lodging of the FIR is an abuse of process of law. The matter was

investigated and cancellation report, admittedly was filed. For what reasons, re-investigation was undertaken is not disclosed. The prosecution has not been able to show as to what more material has been collected during re-investigation / further investigation after forwarding the first cancellation report. Second statement of the complainant taken during re-investigation / further investigation would not per-se reflect material so as to implicate the petitioners. This action of respondent / State cannot be justified as the charge sheet subsequently filed is rendered without any legal basis.

Considering the totality of facts and circumstances of the case, this petition is allowed.

FIR bearing No.153 dated 3.5.2004, under Sections 498A, 406, 417, 418 IPC, Police Station City Bhiwani, Distt. Bhiwani is hereby quashed.

November 21,2006 **(AJAI LAMBA)**
mamta **JUDGE**